

Legal

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May 7, 2090

VIA ELECTRONIC FILING

Mr. Eric A. Taylor
Board Agent
National Labor Relations Board, Region 9
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, OH 45202-3271

Re: (b) (6), (b) (7)(C) and Sam's Club (9-CA-45537)

Dear Mr. Taylor:

This letter represents the Respondent's position in the above referenced matter.¹

STATEMENT OF FACTS

(b) (6), (b) (7)(C) worked for Sam's Club at club number 8132 in Springdale, Ohio from (b) (6), (b) (7)(C) 2010. During the timeframe relevant to this charge, (b) (6), (b) (7)(C) worked as a (b) (6), (b) (7)(C) was terminated on (b) (6), (b) (7)(C) 2010 as a result of (b) (6), (b) (7)(C) conduct during an investigation into matters raised by (b) (6), (b) (7)(C) allegations against a member of (b) (6), (b) (7)(C) as described below.

On (b) (6), (b) (7)(C) 2010 (b) (6), (b) (7)(C) was working the entrance of the club as a (b) (6), (b) (7)(C) covering for an absent associate. One purpose of a club (b) (6), (b) (7)(C) is to check membership cards at the door to ensure entry is allowed only to members. Around (b) (6), (b) (7)(C) left (b) (6), (b) (7)(C) post at the door to assist a member in the Optical area. (b) (6), (b) (7)(C) saw that (b) (6), (b) (7)(C) was not in (b) (6), (b) (7)(C) position and instructed (b) (6), (b) (7)(C) to return to the club entrance. Approximately twenty minutes later, as (b) (6), (b) (7)(C) was searching for a broom to clean up a dog food spill, (b) (6), (b) (7)(C) encountered (b) (6), (b) (7)(C) wiping down carts several feet from the door. (b) (6), (b) (7)(C) took (b) (6), (b) (7)(C) by the arm below her elbow and walked (b) (6), (b) (7)(C) backwards to the mat at the entrance of the club.

¹ This statement is based on the best information available to the undersigned at the time it was written. Respondent reserves the rights to correct, supplement or explain this statement should other or different information become known.

(b) (6), (b) (7)(C) complained about (b) (6), (b) (7)(C) encounters with (b) (6), (b) (7)(C) that same afternoon to (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had yelled at (b) (6), (b) (7)(C) and grabbed (b) (6), (b) (7)(C) arm to take (b) (6), (b) (7)(C) back to the entrance door. (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) to write a statement, which (b) (6), (b) (7)(C) did. When (b) (6), (b) (7)(C) delivered (b) (6), (b) (7)(C) statement to (b) (6), (b) (7)(C) later that afternoon, (b) (6), (b) (7)(C) showed (b) (6), (b) (7)(C) two bruises on (b) (6), (b) (7)(C) upper right arm and stated that (b) (6), (b) (7)(C) bruises easily. (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) would inform (b) (6), (b) (7)(C) of the incident because the (b) (6), (b) (7)(C) was on a leave of absence. (b) (6), (b) (7)(C) also informed the (b) (6), (b) (7)(C) who ultimately brought in (b) (6), (b) (7)(C) from neighboring Club 8136 to investigate the matter.

(b) (6), (b) (7)(C) with the assistance of (b) (6), (b) (7)(C) began the investigation on (b) (6), (b) (7)(C) into (b) (6), (b) (7)(C) allegations. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) conducted a thorough investigation of the incident and ultimately determined that (b) (6), (b) (7)(C) allegations that (b) (6), (b) (7)(C) yelled at (b) (6), (b) (7)(C) and bruised (b) (6), (b) (7)(C) arm were unsubstantiated. Additionally, during the course of the investigation (b) (6), (b) (7)(C) spread the untruthful allegations around the club, and then lied about how many people (b) (6), (b) (7)(C) had told. Because of (b) (6), (b) (7)(C) conduct during the investigation, (b) (6), (b) (7)(C) was terminated on (b) (6), (b) (7)(C) 2010 for gross misconduct related to integrity.

DISCUSSION

1. (b) (6), (b) (7)(C) did not engage in protected concerted activity.

(b) (6), (b) (7)(C) has not presented any facts in support of a claim that (b) (6), (b) (7)(C) engaged in any concerted activities for the purpose of collective bargaining or other mutual aid or protection. (b) (6), (b) (7)(C) was not in any way acting in conjunction with, or on behalf of, any other associate in repeating and then concealing false accounts of (b) (6), (b) (7)(C) personal encounter with (b) (6), (b) (7)(C). As such, there is no protected concerted activity at issue in this matter, and (b) (6), (b) (7)(C) charge should be dismissed. Additionally, even if concerted activity were somehow at issue, Sam's Club had a legitimate business reason for terminating (b) (6), (b) (7)(C) on the basis of gross misconduct during the course of investigating (b) (6), (b) (7)(C) allegations.

2. (b) (6), (b) (7)(C) was terminated for legitimate business reasons.

Sam's Club did not retaliate against (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) lodged a complaint about the conduct of a supervisor. To the contrary, the Club responded promptly and appropriately by sending in an objective manager from a neighboring location to conduct a thorough investigation. (b) (6), (b) (7)(C) was instead terminated based on (b) (6), (b) (7)(C) conduct during the investigation which demonstrated a lack of integrity in (b) (6), (b) (7)(C) actions and (b) (6), (b) (7)(C) words. (b) (6), (b) (7)(C) allegations that (b) (6), (b) (7)(C) yelled at (b) (6), (b) (7)(C) and bruised (b) (6), (b) (7)(C) arm were not supported by the evidence, and yet (b) (6), (b) (7)(C) purposely spread rumors about the allegations throughout the club. Even assuming (b) (6), (b) (7)(C) truly believed (b) (6), (b) (7)(C) own story, it was improper for (b) (6), (b) (7)(C) to share the allegations with people outside the investigation while it was ongoing.

a. (b) (6), (b) (7)(C) fabricated evidentiary support for (b) (6), (b) (7)(C) allegations against (b) (6), (b) (7)(C)

Throughout the investigation, (b) (6), (b) (7)(C) insisted that (b) (6), (b) (7)(C) yelled at (b) (6), (b) (7)(C) and grabbed (b) (6), (b) (7)(C) by the arm, causing bruises, when requiring (b) (6), (b) (7)(C) to stand by the club entrance on the morning of (b) (6), (b) (7)(C). However, both of these claims were deemed unsubstantiated during the investigation on the basis of compelling evidence. At times, it appeared (b) (6), (b) (7)(C) disingenuously shaped (b) (6), (b) (7)(C) story to

lend it support, exaggerating the manner in which (b) (6), (b) (7)(C) spoke to (b) (6), (b) (7)(C) recklessly accusing (b) (6), (b) (7)(C) of causing bruises (b) (6), (b) (7)(C) could not have caused, and inventing a timeline for when (b) (6), (b) (7)(C) bruises were revealed.

First, the claim that (b) (6), (b) (7)(C) yelled at (b) (6), (b) (7)(C) was not corroborated by the witness, (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) was standing near (b) (6), (b) (7)(C) at the club exit on the morning of (b) (6), (b) (7)(C) and stated that (b) (6), (b) (7)(C) did not yell at (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) used a corrective tone while telling (b) (6), (b) (7)(C) to stay at the club entrance. Second, the claim that (b) (6), (b) (7)(C) bruised (b) (6), (b) (7)(C) arm was not supported by the physical evidence. Security photos of the club entrance clearly depict (b) (6), (b) (7)(C) holding (b) (6), (b) (7)(C) arm below the elbow. (b) (6), (b) (7)(C) bruises were on (b) (6), (b) (7)(C) upper bicep. As such, (b) (6), (b) (7)(C) could not have caused the bruises on (b) (6), (b) (7)(C) arm. When shown the evidence and asked about this fact during the investigation, (b) (6), (b) (7)(C) ultimately admitted that (b) (6), (b) (7)(C) did not cause the bruises. In fact, (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) did not know what caused the bruises in question, and that (b) (6), (b) (7)(C) often bruises without knowing the source. Despite these facts, (b) (6), (b) (7)(C) repeatedly spread untruthful allegations to people outside the sphere of the investigation while it was ongoing.

Additionally, (b) (6), (b) (7)(C) claimed that (b) (6), (b) (7)(C) discovered (b) (6), (b) (7)(C) bruises during her 2:20 p.m. lunch period on (b) (6), (b) (7)(C). However, during the investigation it came out that (b) (6), (b) (7)(C) showed (b) (6), (b) (7)(C) bruises to people prior to (b) (6), (b) (7)(C) alleged discovery of them. Both (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) showed them the bruises on (b) (6), (b) (7)(C) arm sometime around 12:30 p.m. on (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) who was working the exit door on the day in question, told (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had approached (b) (6), (b) (7)(C) around 12:30 p.m. on (b) (6), (b) (7)(C) and showed (b) (6), (b) (7)(C) bruises at that time. Separately, (b) (6), (b) (7)(C) stated that while (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) walked from the door to the registers around 12:30 p.m. on (b) (6), (b) (7)(C) showed (b) (6), (b) (7)(C) the bruises on (b) (6), (b) (7)(C) arm. When asked about the time discrepancy between (b) (6), (b) (7)(C) alleged discovery of (b) (6), (b) (7)(C) bruises and when (b) (6), (b) (7)(C) showed them to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) simply replied that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were lying.

b. (b) (6), (b) (7)(C) promulgated rumors about (b) (6), (b) (7)(C) and then lied about it.

As Sam's Club was trying to conduct a thorough investigation of the incident, (b) (6), (b) (7)(C) was dishonest about to whom (b) (6), (b) (7)(C) spoke and showed (b) (6), (b) (7)(C) bruises. Originally, (b) (6), (b) (7)(C) claimed that the only four people (b) (6), (b) (7)(C) told about (b) (6), (b) (7)(C) encounter with (b) (6), (b) (7)(C) and showed (b) (6), (b) (7)(C) bruises to were (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C). However, during the investigation it became apparent that (b) (6), (b) (7)(C) had shared some version of (b) (6), (b) (7)(C) story with others. (b) (6), (b) (7)(C) shared with (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had approached (b) (6), (b) (7)(C) and was mad about an incident with (b) (6), (b) (7)(C). According to (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) grabbed (b) (6), (b) (7)(C) arm and caused the bruising, and (b) (6), (b) (7)(C) demonstrated the grab by pulling on (b) (6), (b) (7)(C) arm. Additionally, a (b) (6), (b) (7)(C) stated that while (b) (6), (b) (7)(C) was working in the area with (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had grabbed (b) (6), (b) (7)(C) upper arm to move (b) (6), (b) (7)(C) back to the door, and re-enacted it for (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) then showed (b) (6), (b) (7)(C) the bruises on (b) (6), (b) (7)(C) arm and stated that (b) (6), (b) (7)(C) had caused them. When told that other associates had come forward with this information, and given the chance to disclose these additional people during (b) (6), (b) (7)(C) final interview with (b) (6), (b) (7)(C) first denied that (b) (6), (b) (7)(C) told anyone other than the four people (b) (6), (b) (7)(C) originally listed. However, later in the conversation (b) (6), (b) (7)(C) admitted to telling other associates that (b) (6), (b) (7)(C) had grabbed (b) (6), (b) (7)(C) arm and bruised (b) (6), (b) (7)(C).

c. Termination was proper in light of (b) (6), (b) (7)(C) conduct.

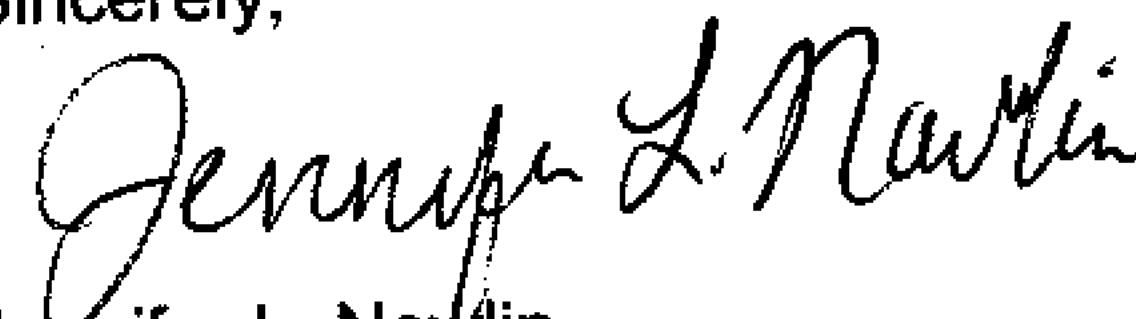
Sam's Club considers dishonesty and compromised integrity as gross misconduct, which is automatically a terminable offense. (b) (6), (b) (7)(C) demonstrated a consistent lack of honesty throughout the course of the investigation into (b) (6), (b) (7)(C) allegations against (b) (6), (b) (7)(C) relied on details that were shaped by the need at hand, rather than grounded in truth, to support (b) (6), (b) (7)(C) allegations. Even though (b) (6), (b) (7)(C) story was inconsistent with reality, (b) (6), (b) (7)(C) continued to share potentially damaging rumors about a member of management with associates. Then (b) (6), (b) (7)(C) lied about with whom (b) (6), (b) (7)(C) had shared (b) (6), (b) (7)(C) version of the story, thereby impeding the Company's ability to conduct a full and thorough investigation. At the conclusion of the investigation, (b) (6), (b) (7)(C) admitted that (b) (6), (b) (7)(C) actions were not respectful or fair to (b) (6), (b) (7)(C).

CONCLUSION

For the foregoing reasons, this charge should be dismissed. (b) (6), (b) (7)(C) has not alleged any facts that would support a claim that (b) (6), (b) (7)(C) engaged in protected concerted activity. To the contrary, (b) (6), (b) (7)(C) activities during the course of the investigation consisted of spreading rumors of alleged misconduct by a member of management as fact; when the "facts" these rumors were based on were in part shaped by the dishonesty of (b) (6), (b) (7)(C). Understandably, such rumors can have a detrimental effect on a member of management's ability to perform (b) (6), (b) (7)(C) functions as a leader and are detrimental to the operation of the business. When given the opportunity to come clean about with whom (b) (6), (b) (7)(C) had shared the rumors, (b) (6), (b) (7)(C) first tried to deny that (b) (6), (b) (7)(C) had expanded (b) (6), (b) (7)(C) audience before finally disclosing the truth of the matter. Sam's Club does not take dishonesty lightly, and it is grounds for immediate termination as an integrity issue.

I trust the information contained herein is sufficient for you to conclude your investigation and dismiss this charge. Please contact me if you have any questions or wish to discuss any of the above.

Sincerely,



Jennifer L. Nowlin
Assistant General Counsel – Labor Relations
Wal-Mart Stores, Inc.



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 9

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May 10, 2010

(b) (6), (b) (7)(C)

Re: Sam's Club
Case 9-CA-45537

Dear (b) (6), (b) (7)(C):

The Region has carefully investigated and considered your charge against Sam's Club alleging violations under Section 8 of the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your charge for the following reasons:

The investigation does not support the allegation of the charge that the Employer discharged you in violation of the Act. In this regard, I note that there is no evidence that you were discharged in connection with any activity on behalf of a labor organization under Section 8(a)(3) of the Act nor evidence that your discharge was connected to refraining from any such activity. The Employer's employees are not represented by a Union at the location where you were employed and there is no evidence of an ongoing organizing campaign. Likewise, there is no evidence that you were discharged as a result of any protected concerted activity you may have engaged in. Your complaint to the Employer about your treatment at the hands of a supervisor is arguably a protected complaint as it involves a working condition. However, there is no evidence that this complaint was made in concert with other employees. Rather, the complaint was limited to your singular experience with the supervisor and there was no evidence that this was of common concern to other employees. Nor was there evidence that other employees directly or indirectly participated or encouraged you in your course of action in lodging this complaint with the Employer. Moreover, even if there was evidence that you acted concertedly, there is insufficient evidence that the complaint itself was the basis for the

(over)

Employer's determination to discharge you, rather than its apparent conclusion that your assertion of injury at the hands of the supervisor was untrue.

Under these circumstances, it was concluded that further proceedings in this matter were not warranted and I am, therefore, declining to issue a complaint.

Your Right to Appeal: The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the GENERAL COUNSEL of the National Labor Relations Board. Use of the Appeal Form (Form NLRB-4767) will satisfy this requirement. However, you are encouraged to submit a complete statement setting forth the facts and reasons why you believe that the decision to dismiss your charge was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. To file an appeal electronically, go to the Agency's website at www.nlr.gov, click on **E-GOV**, select **E-Filing**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date and Time: The appeal is due on **May 24, 2010**. If you file the appeal electronically, it will be considered timely filed if the transmission of the entire document through the Agency's website is accomplished **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or send it by a delivery service, it must be received by the General Counsel in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than **one day before the due date set forth above**.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to www.nlr.gov, click on **E-Gov**, select **E-Filing**, and follow the detailed instructions. The fax number is (202) 273-4283. A request for an extension of time to file an appeal **must be received on or before the original appeal due date**. A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

Confidentiality/Privilege: Please be advised that we cannot accept any limitations on the use of any appeal statement or evidence in support thereof provided to the Agency. Thus, any claim of confidentiality or privilege cannot be honored, except as provided by the FOIA, 5 U.S.C. 552, and any appeal statement may be subject to discretionary disclosure to a party upon request during the processing of the appeal. In the event the appeal is sustained, any statement or material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. Because we are required by the Federal Records Act to keep copies of documents used in our case handling for some period of years after a case closes, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential source, commercial/financial information or

personal privacy interests (e.g., FOIA Exemptions 4, 6, 7(C) and 7(d), 5 U.S.C. § 552(b)(4), (6), (7)(C), and (7)(D)). Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

Notice to Other Parties of Appeal: You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the General Counsel, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are set forth in this letter.

Very truly yours,

Gary W. Muffley
Regional Director

GWM/EAT/md

Attachments (4)

cc: (b) (6), (b) (7)(C)

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